

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

KYREE SMITH

PLAINTIFF

V.

NO.: 4:20-cv-153-DMB-JMV

KROGER LIMITED PARTNERSHIP I

DEFENDANT

ORDER

This matter is before the Court on the Defendant's Motion to Compel [22]. The court has been advised by counsel that following the motion to compel, the Plaintiff subsequently provided the discovery at issue. As such, the motion to compel is denied as moot.

However, there remains the issue of attorney fees and expenses, if any, incurred in filing the motion. Fed. R. Civ. P. 37(a)(5)(A), governs the award of the same and provides in relevant part:

If the motion is granted—or if the disclosure or requested discovery is provided after the motion was filed—the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees.

In the instant case, there has been no opposition filed to the motion, and defense counsel has satisfied the requisites for an award of fees and expenses. Accordingly, it hereby ordered the defense counsel's reasonable expenses, including attorney fees, incurred in prosecuting the instant motion shall be paid by the Plaintiff. Defense counsel shall file an affidavit of its reasonable fees and expenses within seven (7) days of the date of this order. The plaintiff's counsel shall have five (5) days from the filing of defense counsel's affidavit to file any response.

SO ORDERED, this the 13th day of July, 2021.

/s/ Jane M. Virden
UNITED STATES MAGISTRATE JUDGE